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Supreme Court, U.S.
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NO. 94-1700

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1992

MARVINELL BROWN, *Petitioner,*

v.

HOUSTON INDEPENDENT SCHOOL DISTRICT, et.al., *Respondents.*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

I. Whether the Petitioner is entitled to the granting of her petition for writ of certiorari.

II. Whether the trial court and the Fifth Circuit Court of Appeals properly granted and affirmed summary judgment for the Respondents, based upon the doctrines of res judicata and statute of limitations.

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SUMMARY OF ARGUMENT

I. The Petitioner is not entitled to the granting of her petition for writ of certiorari. Under the Rules of the United States Supreme Court, certiorari is granted only for the purposes of resolving unsettled, unique, or unusually significant questions of law. This case involves well-settled principles of law that were properly applied by the courts below. Furthermore, this Court limits the granting of certiorari to questions of broad importance. There are no questions of broad importance presented in this case. Accordingly, the Petitioner's request for the granting of writ of certiorari should be denied.

II. Further, the trial court and Fifth Circuit Court of Appeals properly granted and affirmed summary judgment for the Respondents. The rulings by these courts were based on the res judicata and statute of limitations defenses. This lawsuit is the second lawsuit filed by the Petitioner regarding her placement on medical leave in January of 1989 by the Houston Independent School District ("District"). Her first lawsuit was dismissed at the trial court level. The Fifth Circuit affirmed the dismissal, and this Court denied a petition for writ of certiorari. See 113 S. Ct. 198 (1992). This second lawsuit arose out of the same operative facts and alleges essentially the same causes of action, i.e., violation of due process, discrimination based on race and disability, and various state law claims. As the trial court and the Fifth Circuit both determined, the Petitioner's allegations are duplicitous of her first lawsuit and are thus barred by res judicata.

Further, the Petitioner's claims are barred by statute of limitations. The present lawsuit was filed over four and one-half years after the Petitioner's placement on medical leave. Her claims are untimely under any applicable statute of limitations. Therefore, while the Fifth Circuit did not address this issue, the trial court correctly determined that the Petitioner's claims were barred by limitations.

ARGUMENTS AND AUTHORITIES

I. The Petitioner is Not Entitled to the Granting of her Petition for Writ of Certiorari

Rule 10 of the Rules of the United States Supreme Court specifies that a petition for writ of certiorari shall be granted only when there are special and important reasons therefor. No such reasons are presented in this case. A writ of certiorari is generally granted to resolve a split of authority among the circuit courts of appeal or to resolve important unsettled questions of federal law. In contrast, the law governing this case is well settled, and the case was properly decided by the trial court and the Fifth Circuit.

This Court exists to serve as a final arbiter of questions of major legal importance. See *Watt v. Alaska*, 451 U.S. 259, 101 S.Ct. 1673 (1981). It is irrelevant that a question is of importance to a particular party; this Court limits its review to questions of broad importance. See *Rice v. Sioux City Cemetery*, 349 U.S. 70, 75 S.Ct. 614 (1955). There are no questions of broad importance presented in this case, nor are there any unsettled questions of law. This case primarily involves whether the Petitioner's claims are barred by res judicata and/or statute of limitations; the trial and appellate courts determined that her claims were barred. Indeed, the courts below acted in accordance with Supreme Court and other legal precedents in granting and affirming summary judgment in favor of the Respondents. In sum, it is clearly inappropriate to grant a petition for writ of certiorari in this case, and the Petitioner's request should be denied.

II. The Petitioner's Claims Fail as a Matter of Law Under the Doctrines of Res Judicata and Statute of Limitations

A. Res Judicata

For a prior judgment to bar an action on the basis of res judicata, the parties must be identical in both suits, the prior judgment must have been rendered by a court of competent jurisdiction, there must have been a final judgment on the merits, and the same causes of action must be involved in both cases. See *Miller v. U.S. Postal Service*, 825 F.2d 62 (5th Cir. 1987). The parties agree that the judgment in the Petitioner's first lawsuit was a final judgment rendered by a court of competent jurisdiction. Thus, the primary questions on appeal involve the identity of the parties and the causes of action asserted by the Petitioner.

As the Fifth Circuit stated in *Nilsen v. City of Moss Point*, 701 F.2d 556 (5th Cir. 1983) (en banc): "It is black letter law that res judicata bars all claims that were or could have been advanced in support of the cause of action on the occasion of its former adjudication, . . . not merely those that were adjudicated." 701 F.2d 556, 560. The court continued: "It is equally settled that one who has a choice of more than one remedy for a given wrong . . . may not assert them serially, but must advance them all at once." Id. Nearly all of the Petitioner's claims in her current lawsuit were raised and adjudicated in her first lawsuit. Her argument that she has asserted new causes of action in the present suit is unavailing. The present suit obviously arises from the same controversy fully litigated in the prior lawsuit (i.e., her placement on medical health leave). The

test for comparing causes of actions is whether the primary right and duty or wrong are the same in each action. Id. at 559. That test is met in the present case.

The Petitioner alleges that res judicata does not apply because she has asserted new statutory claims for relief in her second lawsuit. Again, res judicata bars all claims that were or could have been advanced in the prior suit. See *Nilsen*; *Miller*. The statutory claims raised in the second lawsuit by the Petitioner could have been raised in the prior lawsuit. For example, in her second suit she asserts claims under 29 U.S.C. § 794 (Section 504 of the Rehabilitation Act) and 42 U.S.C. § 12101, et seq, the Americans with Disabilities Act (ADA). Section 504 was enacted in 1973, and the ADA was signed into law in 1990. Both of these statutes existed at the time her first lawsuit was litigated. Her attempt to assert these claims at this late date is the type of activity that runs to the core purpose of the res judicata doctrine. Parties simply are not entitled to a "second bite of the apple" for claims that were not properly asserted in prior litigation.

Even if, for the sake of argument only, these claims could not have been asserted in her first lawsuit, the Petitioner is precluded from raising them in a second lawsuit arising out of the same operative facts after final judgment was rendered in the first case. Res judicata bars subsequent litigation under the same operative facts after a final judgment is rendered, even though theories of recovery may differ. As both this Court and the Third Circuit have stated, a plaintiff cannot relitigate a case based on new legal theories or statutory claims created after final judgment is rendered. See, e.g., *Johnson v. Railway Express Agency*, 421 U.S. 454, 95 S.Ct. 1716 (1975) (a plaintiff's 42 U.S.C.

§ 1981 claim was barred by his failure to assert it in prior litigation); *Antonioli v. Lehigh Coal Company*, 451 F.2d 1171 (3rd Cir. 1971).

The Petitioner also contends that because the identities of the parties in the two lawsuits are not identical, res judicata does not apply. This argument is also without merit. The interests of all Respondents in this case are identical. That is, the Respondents are the District and several of its employees and school board members. The employees and board members are merely nominal parties; the District is a real party in interest. Thus, res judicata bars the claims against all defendants. See *Slaughter v. AT&T Information Systems*, 905 F.2d 92, 94 (5th Cir. 1990).

For all of these reasons, this case meets the requirements for dismissal based on res judicata, and the trial and appellate courts appropriately dismissed the case under that defense.

B. Statute of Limitations

While the Fifth Circuit did not address this issue, the trial court correctly noted that this case was subject to dismissal based on the defense of statute of limitations. Under Texas law, limitations of most claims are governed by the two-year statute included in the Texas Civil Practice & Remedies Code. See Tex. Civ. Prac. & Rem. Code § 16.003. This statute applies to the Petitioner's state tort claims. See *Brady v. Blue Cross & Blue Shield of Texas*, 767 F. Supp. 131 (N.D. Tex. 1991); *Ali v. Higgs*, 892 F.2d 438 (5th Cir. 1990). This two-year statute also applies to most of the Petitioner's federal claims. See, e.g., *Hinson-El*

v. Rogers, 523 F.2d 51 (5th Cir. 1991). By all applicable statutes of limitation, these claims are untimely and subject to dismissal.

Also, the Petitioner's breach of contract claim is untimely. This claim is governed by a four-year statute of limitations. See Tex. Civ. Prac. & Rem. Code § 16.004. The limitations period on the Petitioner's contract claim commenced on January 19, 1989, the date of her placement on medical health leave. However, she did not file a contract claim until August of 1993 (over four and one-half years later), making her contract claim untimely. In sum, the trial court directly dismissed the second lawsuit as untimely under all applicable statute of limitations.

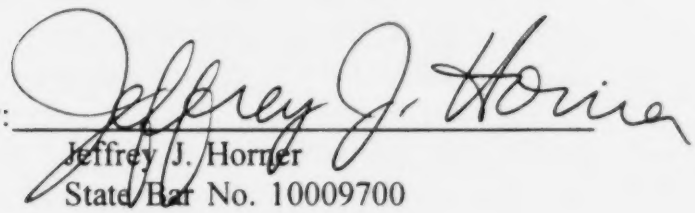
CONCLUSION

Due to the actions of the Petitioner, this case suffers from a long and tortured procedural history. The Respondents have been forced essentially to litigate the same lawsuit twice, each time from the trial court level to the United States Supreme Court. The Respondents request that this Court bring an end to the needless expenditure of money and administrative time incurred in defending this litigation.

The trial court correctly rendered summary judgment in this case, and the Fifth Circuit concurred. The record clearly demonstrates that all causes of action asserted by the Petitioner are barred by the res judicata and/or statute of limitations defenses. Furthermore, this case presents no unique, important, or unsettled questions of law which justify further consideration by this Court. Accordingly, the Respondents respectfully request that this Court deny the petition for writ of certiorari.

Respectfully submitted,

Bracewell & Patterson, L.L.P.

By: 

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CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing Brief in Opposition to Petition for Writ of Certiorari has been forwarded to the Appellant, by placing a copy of same in the United States Certified Mail, Return Receipt Requested, on this 26 day of April, 1995, addressed as follows:

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Jeffrey J. Horner

CERTIFICATE OF RECEIPT

I received the Petitioner's petition for writ of certiorari on April 17, 1995 by U.S. Mail.

Jeffrey J. Horner

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